

**REMARKS***Claim Rejections Under 35 U.S.C. § 103*

Claims 1-4, 8-12 and 15-19 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Shultz (U.S. Patent No. 5,603,087) in view of Olkkonen et al. (U.S. Patent No. 6,842,460). Claim 7 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Shultz (U.S. Patent No. 5,603,087) in view of Olkkonen et al. (U.S. Patent No. 6,842,460) and further in view of Terlep et al. (U.S. Patent No. 5,796,777). Claims 13-14 and 20 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Shultz (U.S. Patent No. 5,603,087) in view of Olkkonen et al. (U.S. Patent No. 6,842,460) and further in view of Dupray (U.S. Published App. No. 2004/0266457). Applicant respectfully traverses.

Claims 1-4 and 8-11

Claim 1 recites, in part, "querying for supplemental information from each of the detected wireless network devices." The Office Action asserts that this limitation is provided in Shultz at column 4, lines 11-20. Office Action, page 2, first paragraph. Applicant respectfully disagrees. The cited section of Shultz does address the development of supplemental signal information. However, this supplemental information is not developed in response to a query directed to Shultz' radio telephone units 130. In direct contrast to Applicant's claim 1, Shultz expressly states that its supplemental information is developed by its base radio equipment 132. Shultz, column 4, lines 11-17. Because Shultz is developing its supplemental signal information by the receiving equipment, and not as a result of querying the transmitting equipment, it cannot teach or suggest querying for supplemental information from each of the detected wireless network devices as required by claim 1. Applicant further contends that because the supplemental signal information is developed by the base radio equipment 132 using an intermediate frequency generated in response to a high frequency signal received from a radio telephone unit 130, Shultz' radio telephone units 130 would be incapable of providing such information even if it were queried, i.e., because Shultz' supplemental signal information corresponds to levels of interference with the signals received by its base radio equipment 132

from its radio telephone units 130, a transmitting device cannot be aware or, or detect, interference levels experienced at the receiving unit. Olkkonen et al. was not asserted to teach or suggest this limitation, and Applicant contends that it does not. In addition, because neither reference teaches or suggests this limitation, Applicant contends that the combination also fails to teach or suggest querying for supplemental information from each of the detected wireless network devices as recited in claim 1.

Applicant further contends that Shultz and Olkkonen et al. are non-analogous arts. Specifically, Shultz is directed to detecting and indicating a level of interference on a high frequency angular modulated signal. *See, e.g.,* Shultz, Abstract. Shultz is not concerned with prioritizing wireless devices. Instead, it seeks to detect interference in cellular radiotelephone communications in order to determine when corrective measures are required, such as handing off calls to other cells. *See, Shultz, column 3, lines 1-7.* In contrast, Olkkonen et al. is directed to the creation of ad hoc networks. *See, Olkkonen et al., Abstract.* Applicant contends that determination of interference levels is wholly unrelated to the function of creating ad hoc networks. Applicant further contends that a person having ordinary skill in the art would not reasonably have expected to solve the problem identified in Shultz using the network creation teachings of Olkkonen et al. *Cf. MPEP § 2141.01(a) (II) and (a)(V).* As such, Applicant respectfully submits that the references cannot be properly combined in support of a rejection under 35 U.S.C. § 103(a), and the rejection is therefore improper.

If view of the foregoing, Applicant contends that claim 1 is patentably distinct from the cited references, taken either alone or in combination. As claims 2-4 and 8-11 include all patentable limitations of claim 1, these claims are also believed to be allowable. Applicant thus respectfully requests reconsideration and withdrawal of the rejections under 35 U.S.C. § 103(a), and allowance of claims 1-4 and 8-11.

#### Claims 12 and 15-17

Claim 12 recites, in part, “querying the wireless network device to determine whether it is of a desired type” and “querying the wireless network device to determine whether is has a desired status.” The Office Action asserts that these limitations are provided in Shultz at column 4, lines 11-34. Office Action, page 5, second full paragraph. Applicant respectfully disagrees.

The cited section of Shultz addresses the development of supplemental signal information. However, this supplemental information is not developed in response to a query directed to Shultz' radio telephone units 130 as discussed with respect to claim 1. In addition, Shultz' supplemental information is indicative of a level of interference with received communications, and does not address a device type or status. *See, e.g.*, Shultz, column 4, lines 11-15. Applicant further contends that Shultz and Olkkonen et al. are non-analogous arts, as discussed with respect to claim 1, such that their combination is improper.

If view of the foregoing, and for reasons as presented with respect to claim 1, Applicant contends that claim 12 is patentably distinct from the cited references, taken either alone or in combination. As claims 15-17 include all patentable limitations of claim 12, these claims are also believed to be allowable. Applicant thus respectfully requests reconsideration and withdrawal of the rejections under 35 U.S.C. § 103(a), and allowance of claims 12 and 15-17.

#### Claims 18-19

Claim 18 recites, in part, "querying for supplemental information from each wireless network device associated with a received signal." The Office Action asserts that this limitation is provided in Shultz at column 4, lines 11-20. Office Action, page 7, second full paragraph. Applicant respectfully disagrees. As noted with respect to claim 1, Shultz does not teach or suggest querying for supplemental information from each wireless network device associated with a received signal. Applicant further contends that Shultz and Olkkonen et al. are non-analogous arts, as discussed with respect to claim 1, such that their combination is improper.

If view of the foregoing, and for reasons as presented with respect to claim 1, Applicant contends that claim 18 is patentably distinct from the cited references, taken either alone or in combination. As claim 19 includes all patentable limitations of claim 18, this claim is also believed to be allowable. Applicant thus respectfully requests reconsideration and withdrawal of the rejections under 35 U.S.C. § 103(a), and allowance of claims 12 and 15-17.

#### Claim 7

Applicant contends that it has shown claim 1 to be patentably distinct from the primary and secondary references of Shultz and Olkkonen et al.. Even if combination were proper, which

Applicant denies, the tertiary reference of Terlep et al. fails to overcome the deficiencies of Shultz and Olkkonen et al. as noted with respect to claim 1. In particular, Shultz, Olkkonen et al. and Terlep et al., taken either alone or in combination, fail to teach or suggest querying for supplemental information from each of the detected wireless network devices as recited in claim 1. As claim 7 includes all patentable limitations of claim 1, this claim is also believed to be allowable. Applicant thus respectfully requests reconsideration and withdrawal of the rejection under 35 U.S.C. § 103(a), and allowance of claim 7.

#### Claims 13-14 and 20

Applicant contends that it has shown claims 12 and 18 to be patentably distinct from the primary and secondary references of Shultz and Olkkonen et al.. Even if combination were proper, which Applicant denies, the tertiary reference of Dupray fails to overcome the deficiencies of Shultz and Olkkonen et al. as noted with respect to claims 12 and 18. In particular, Shultz, Olkkonen et al. and Dupray, taken either alone or in combination, fail to teach or suggest querying the wireless network device to determine whether it is of a desired type and whether it has a desired status as recited in claim 12, and Shultz, Olkkonen et al. and Dupray, taken either alone or in combination, fail to teach or suggest querying for supplemental information from each wireless network device associated with a received signal as recited in claim 18. As claims 13-14 include all patentable limitations of claim 12, and claim 20 includes all patentable limitations of claim 18, these claims are also believed to be allowable. Applicant thus respectfully requests reconsideration and withdrawal of the rejection under 35 U.S.C. § 103(a), and allowance of claim 13-14 and 20.

**CONCLUSION**

In view of the above remarks, Applicant believes that all pending claims are in condition for allowance and respectfully requests a Notice of Allowance be issued in this case. Please charge any further fees deemed necessary or credit any overpayment to Deposit Account No. 08-2025.

If the Examiner has any questions or concerns regarding this application, please contact the undersigned at (612) 312-2204.

Respectfully submitted,

Date:

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